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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of:)
)
Price Cap Performance Review for) CC Docket No. 94-1
Local Exchange Carriers)

OPPOSITION TO
USTA EX PARTE PROPOSAL FOR THE LEC PRICE CAP PLAN

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits this Opposition to the January 18, 1995 ex parte filing by the United States Telephone Association ("USTA") in the above-captioned proceeding.¹ That filing includes both a proposal for a "moving average productivity offset" and a "Recommended Process for Implementing Adaptive Regulation," which largely reiterates the USTA deregulatory wish list first promulgated in a September 1993 Petition for Rulemaking.² CompTel will demonstrate herein that USTA's timeworn arguments for virtually absolute pricing flexibility remain unwarranted and directly contrary to the public interest.³

¹ Public Notice, "Common Carrier Bureau Invites public Comments on USTA Ex Parte Submission," DA 95-102 (January 24, 1995).

² USTA Petition for Rulemaking Regarding Reform of the Interstate Access Charge Rules, RM-8356, Public Notice, FCC Report No. 1975 (released October 1, 1993) ("1993 Petition").

³ CompTel will not address the productivity offset proposal, but believes that the record in this proceeding strongly supports the CARE proposal.

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In opposing the 1993 Petition, CompTel explained that USTA's reform proposal is a "call for unwarranted and destructive deregulation, in advance of the development of realistic access alternatives and without regard for the deleterious impact on long distance competition and consumers."⁴ After USTA advocated identical relief in its opening comments in the LEC Price Cap Review proceeding, CompTel emphasized that the USTA plan:

rests on a series of indefensible assumptions. Specifically, USTA fails to recognize that true switched access competition cannot develop without opening the local market to competition, that further deregulation is not necessary to allow the LECs to compete, that switched access competition will not benefit consumers unless discrimination is controlled, and, most fundamentally, that there is no competition for the vast majority of LEC access services in the vast majority of locations.⁵

Now USTA has resurrected its proposals for a third time, with minor modifications. As articulated in the "Recommended Process for Adaptive Regulation," USTA asks the Commission to:

- Eliminate the DS1 and DS3 subindices
- Expand the lower banding limits to minus 15 percent
- Extend zone pricing to the local switching category and all elements in the trunking category except the interconnection charge.

⁴ Opposition of CompTel, RM-8356, filed Nov. 1, 1993, at 1.

⁵ Reply Comments of CompTel, CC Docket No. 94-1, filed June 29, 1994, at 5.

- Streamline new service regulation, including elimination of Part 69 waiver requirements for new rate elements and an incremental cost standard to justify rates for new services.
- Classify access markets according to the tripartite structure of Initial Market Areas, Transitional Market Areas, and Competitive Market Areas, with contract-based tariffs allowed in CMAs and TMAs.⁶

USTA offers no additional justification for such radical deregulation, and none is available. The local services market continues to be an absolute monopoly, precluding effective competition for switched access.⁷ The LECs continue to enjoy pricing flexibility far transcending that afforded AT&T at an equivalent stage in the development of interexchange competition, including the ability under the price cap rules to significantly alter pricing relationships over a short period of time, to engage in zone density pricing, and most notably, to offer term and volume discounts under many circumstances.⁸ USTA continues to blur the line

⁶ USTA Ex Parte, Attachment 2.

⁷ As CompTel explained in opposing USTA's 1993 Petition:

To provide a complete switched access alternative, a CAP's network must attract a large number of subscribers who have relatively modest long distance calling needs. The CAP will have to bundle "access" with local service to build its subscriber base and carry the full complement of exchange traffic to achieve scale economies to compete with the LEC.

CompTel Opposition, RM-8356, at 9.

⁸ As CompTel has explained on several occasions, this latter aspect of pricing flexibility encompasses the entirely (continued...)

between the wholesale switched access market and the retail special access market, and to ignore the reality that switched access competition will benefit end users only if it promotes fair long distance competition. And finally, competition for switched access services continues to be all but nonexistent, stymied by judicial decisions sought by the LECs and the tremendous economies of scope enjoyed by the incumbent local exchange service providers.

Against this background, the specific relief sought by USTA can be readily dismissed. Most of USTA's proposals are patently contrary to the public interest because they would allow unbridled pricing flexibility in the absence of effective marketplace or regulatory constraints on anticompetitive conduct. For example, as CompTel detailed in opposing the 1993 Petition, the "market area" approach is vastly overreaching: "[m]erely to state the relief requested -- compete deregulation of interstate access services when customers representing eighty percent of total interstate access demand have no alternative source of supply -- is to demonstrate that it cannot be justified."⁹ Similarly,

⁸(...continued)
unjustified ability to offer uneconomic volume discounts for shared network elements used in switched access and to grossly over-allocate overhead to tandem-switched transport. See Comments of CompTel, CC Docket No. 94-1, filed May 9, 1994, at 5-7, 10-12; CompTel Petition for Reconsideration, CC docket No. 91-141 (Switched Phase I), filed Oct. 15, 1993.

⁹ CompTel Opposition, RM-8356, at 11.

contract-based tariffs would guarantee unreasonable discrimination in favor of AT&T, because in the absence of effective competition, "the LECs will limit rate decreases as narrowly as possible, targeting them to AT&T alone even though declining costs warrant across-the board reductions under a cost-based approach."¹⁰ Elimination of the DS3/DS1 subindices would yield the same undesirable result by removing the last, limited protection against a totally arbitrary rate relationship between the DS3 services used almost exclusively by AT&T, and the DS1 services used by other IXCs.

USTA's proposed streamlining of new services likewise would invite discrimination and undermine fair long distance competition. For example, USTA suggests that the tariff review period for new services with "de minimis" projected revenues should be 21 days.¹¹ The de minimis standard is vague, however, and for carriers enjoying \$15 billion in annual revenues, a major service offering with serious anticompetitive effects could be insulated from effective review under this standard. In addition, USTA recommends that new services be justified based solely on a showing that they cover incremental costs. Such a rule would exacerbate the existing practice of forcing smaller IXCs to bear a

¹⁰ CompTel Comments, CC Docket No. 94-1, at 5.

¹¹ USTA Ex Parte, Attachment 2, at 2-3.

disproportionate amount of overhead and inevitably would be used to give AT&T further undue preferences.

Other aspects of USTA's plan -- expansion of lower banding limits and extension of zone density pricing -- might be reasonable if tied to non-discriminatory rate relationships between switched access offerings. Even under the Commission's existing rules, however, rate relationships bear little connection to underlying costs. Under USTA's proposal, rates would be entirely divorced from costs, and LECs would have unconstrained flexibility to extend discriminatory and insupportable discounts to favored customers.

* * *

Under the current price cap rules, LECs are using their considerable pricing flexibility to discriminate in favor of AT&T, even though there is no technical or economic basis for doing so.¹² Such discrimination is undermining the goals of price cap regulation by impeding efficiency and innovation, restraining economic growth, and frustrating deployment of the NII.¹³ Implementation of USTA's "adaptive" reform plan, which eliminates all shackles on destructive discrimination, would aggravate these problems, preclude fair competition in the long distance market, and harm consumers.

¹² See CompTel Comments, CC Docket No. 94-1, at 5-8.

¹³ Id. at 9-14.

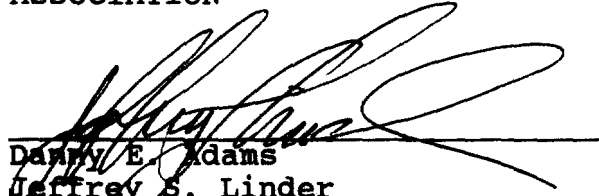
As CompTel explained in detail in its earlier filings in this docket, the Commission must make two critical changes to the price cap plan in order to achieve its fundamental goals. First, it should require a permanent, cost-based relationship between DS3 and DS1 rates and direct the LECs to derive tandem-switched transport rates based on DS3 and DS1 rates, taking into account each LEC's copper/fiber ratio. Second, it should treat tandem switching as part of an overall switching basket, and expeditiously compel the LECs to develop a tandem switching rate based on costs identified using the model for ONA pricing adopted in Docket No. 92-91. These measures, unlike USTA's insupportable call for drastic deregulation, will advance competition in the access and long distance markets and produce lower rates for consumers.

Respectfully submitted,

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February 8, 1995

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of February, 1995,
I caused a copy of the foregoing "Opposition to USTA Ex Parte
Proposal for the LEC Price Cap Plan" to be mailed via first-
class postage prepaid mail to:

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